

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in Commissioners Meeting Room,
Third Floor, Court House,
Boonville, IN
Wednesday, January 23, 2008, 6:00 P.M.

MEMBERS PRESENT: Tony Curtis, Terry Dayvolt, Scott Dowers, William McCune, Richard Medcalf, Don Mottley and Larry Willis.

Also present were: Sherri Rector, Executive Director and Secretary; Morrie Doll, Attorney; and Sheila Lacer, staff.

MEMBERS ABSENT: None.

The meeting was called to order by the Executive Director. Roll call was taken and a quorum was declared present. She then welcomed new Board members, Tony Curtis and Scott Dowers.

MINUTES: Upon a motion made by Larry Willis and seconded by Bill McCune, the Minutes of the last regular meetings held October 24, 2007, November 28, 2007, December 17, 2007 and the Hearing Officer Minutes of December 17, 2007, were approved as circulated.

ELECTION OF OFFICERS:

The Executive Director stated the first order of business is to elect a Chairman of the Warrick County Area Board of Zoning Appeals to serve during 2008.

Bill McCune made a motion to elect Larry Willis as Chairman. Richard Medcalf seconded the motion.

Bill McCune made a motion to close the nominations and elect Larry Willis by acclamation. The motion was seconded by Richard Medcalf and unanimously carried.

The Executive Director turned the meeting over to the Chairman.

The Chairman stated the next order of business is to elect a Vice-Chairman of the Warrick County Area Board of Zoning Appeals to serve during 2008.

Terry Dayvolt made a motion to elect Bill McCune as Vice Chairman.

Mr. McCune stated he would not accept the nomination.

Mr. Dayvolt withdrew his motion.

Larry Willis made a motion to elect Don Mottley as Vice Chairman. Richard Medcalf seconded the motion.

Larry Willis made a motion to close the nomination and to elect Mr. Mottley by acclamation. The motion was seconded by Bill McCune and unanimously carried.

SET MEETING DATE, TIME AND PLACE:

The Chairman stated they need to set the meeting date and time. He stated they currently meet at 6:00 P.M. on the fourth Wednesday of each month except November and December which will be the third Wednesday due to the holidays.

Mrs. Rector stated last year they held the November and December meetings on a Monday and that caused some problems with the notices and so it would be best to move the meeting up one week for those two months.

Larry Willis made a motion to hold the meetings at 6:00 P.M. on the fourth Wednesday of each month except November and December which will be the third Wednesday. The motion was seconded by Don Mottley and unanimously carried.

ADOPTION OF RULES AND REGULATIONS:

Mrs. Rector stated there has been no change to the Rules and Regulations from last year.

Don Mottley made a motion to adopt the Rules and Regulations. The motion was seconded by Richard Medcalf and unanimously carried.

The Executive Director stated she would have a set for the Chairman to sign at the next meeting.

The Chairman explained the Rules of Procedure to the applicants.

VARIANCES:

BZA-V-08-01 – Applicant & Owner: Ryan Hall & Kelly Hall.
Premises: Property located on the E side of Gore Rd. approximately 660’ N of the intersection formed by Gore Rd. (W 150) & Clutter Rd. (N 1250), Hart Twp. Parcel 2 in George Julian Sr. Minor Sub. 12670 Gore Rd. (Complete legal on file.)
Nature of Case: Applicants request a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a single family dwelling on property with an existing residence in an unattached accessory building to be used as a guest house after proposed residence is completed in an “A” Agriculture zoning district. *Advertised in the Boonville Standard January 10, 2008.*

Ryan Hall was present.

The Chairman called for a staff report.

The Executive Director stated they have submitted all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. Mrs. Rector explained they own 7.5 acres and are requesting a Variance to build a residence on their property. She stated they need a Variance because they have living quarters (1250 sq. ft) in their unattached accessory building they constructed in 2003 and added they state on their application “*We are currently living on the property and it would be financially unreasonable to tear out where we are currently in order to build a house.*” Mrs. Rector added the applicants have further stated to staff they want to keep the living quarters in the unattached accessory building in order to use it as a guest house. She added all surrounding property is zoned Agriculture with residences on all surrounding property with the exception of the vacant property directly west owned by the Dimmetts and one vacant property to the south owned by the Julians. She stated there is no flood plain on the property and there is an existing driveway on Gore Road.

Mr. Hall stated his sister-in-law lives in Florida and comes to visit several times and that is why they want to keep the living quarters in the accessory building.

Mrs. Rector asked if he would be renting it out to which Mr. Hall stated it will be for family use only and he never intends to rent it.

Don Mottley asked if a Hold Harmless is needed to which the Executive Director stated the property is not accessed by an easement and so a Hold Harmless would not be required.

Larry Willis asked how often the sister-in-law comes up from Florida to which Mr. Hall stated it is usually every three or four months.

Mr. Willis stated he has a problem with people putting a second residence on property and then trying to rent it.

Mr. Hall stated that is not his intent. He stated the living quarters are in his accessory building with their belongings and he doesn’t want someone living next to his belongings and they will never rent it out.

Larry Willis asked how large a house they plan to build.

Mr. Hall stated it is a 2800 square foot house with three bedrooms and 2.5 bath ranch home.

Mrs. Rector stated in the past they have put a condition on the approval that it couldn’t be used for rental property.

Attorney Doll stated that could be put as a condition and he would recommend it so it would be clear to everyone.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Don Mottley made a motion the findings of fact be as follows:

1. A VARIANCE is a means of relief which is available only when some peculiar circumstances as to SIZE OR SHAPE of the parcel of land (and sometimes its LOCATION) is such that the literal application of the provisions of the Article would impair the owner's rights to some reasonable use of the property. The owners could not build a new home if a Variance is not granted unless they remove their current living quarters from the pole barn.
2. The circumstances of this application are peculiar to the property in question
3. The owner is entitled to reasonable use of their property, with a residence being a reasonable use.
4. A financial hardship would be incurred by the applicants if they were required to remove the existing living quarters from the unattached accessory building.
5. The VARIANCE will not result in substantial detriment to adjacent property or the surrounding neighborhood and will not be materially detrimental to the public welfare.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to an Improvement Location Permit being obtained.
2. Subject to any required Building Permit from the Warrick County Building Department.
3. Subject to all public utility easements and facilities in place.
4. Subject to the property being in compliance at all times with the applicable zoning ordinance of Warrick County.
5. Subject to all rules and regulations of the Warrick County Health Department.
6. The living quarters in the unattached accessory building is to be used as a guest house not rental purposes.

The motion was seconded by Tony Curtis and unanimously carried.

SPECIAL USES:

BZA-SU-08-02 – Applicant/Lessee: Sojourn Community Church, Inc. by Bill Brunton, Pastor. Owner/Lessor: Grand RDC Partnership, LP by Robert Metts, Agent. Premises: Property located on the E side of Old SR 261 approximately 175' N of the intersection formed by Old SR 261 & Rose Hill Rd. Lot 2 Newburgh Plaza North Shopping Center Minor Subdivision, Ohio Twp. 4944 Old SR 261.(Complete legal on file.) Nature of Case: Applicant requests a Special Use (SU19) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a church in an existing shopping center in a "C-4" General Commercial Zoning District. *Advertised in the Boomville Standard January 10, 2008.*

Bill Brunton and Robert Metts were present.

The Chairman called for a staff report.

The Executive Director stated they still need either the return receipts or unopened envelopes from surrounding property owners Rose Hill Cemetery and Meadowood Apartments. She stated they also sent notices to all business located within the stripmall complex and they still need return receipts or unopened envelopes from Corner Closet Consignments, The Dollar General Store and Shirtsails.

Mr. Brunton submitted the remaining return receipts to the Executive Director.

Mrs. Rector then stated they are requesting a Special Use for a church and the applicant's statement on the application is " *and/all related activities of a church including services, child care, Sunday school, church seminars and retreats, meetings.*" She added the existing property is a shopping mall and the area to be used by the church was previously occupied by The Edge fitness center. Mrs. Rector explained the property is zoned "C-4" General Commercial and the property to the north and south are also "C-4" and to the east and west is Agriculture. She stated there is no flood plain on the property and there is an existing entrance for the shopping mall. She stated the proposed church is to have 150 seats and would require 25 parking spaces which would be covered in the parking lot for the mall. She stated the application is in order.

The Chairman called for questions from the Board.

Terry Dayvolt stated he and Attorney Doll were discussing the fact that the Pizza Chef serves alcohol and wondered if there is a certain distance they need to be from a church.

Attorney Doll stated he knows that in order to obtain an alcohol permit you must be at least 600' from a church but he doesn't know if there is a grandfather clause that if the liquor establishment is in existence before the church comes into the neighborhood the distance requirement doesn't apply or if that is even this Board's worry. He stated that may be the shopping center's worry.

Bill McCune asked if that works both ways.

Attorney Doll stated a liquor establishment cannot locate within a distance of 600' and he doesn't know if it works in reverse.

Pastor Brunton stated when he filed for this Special Use he was given a name of a member of the Alcohol Board and he was told that the present owner (liquor establishment) is grandfathered. He stated he has spoken to the owner of the Pizza Chef as well.

Mrs. Rector stated that is why they had them notice everyone in the shopping center so if there was a question it could be discussed.

Larry Willis stated the application says something about child care and asked if that is going to be during church services or if it is going to be all day care.

Pastor Brunton stated it would only be during the times things were going on in church. He stated if they wanted a full time day care they would have to file a new application for a day care.

Mr. Metts stated the owners wouldn't permit that.

Mr. Brunton stated the facility really isn't suited for child care.

Terry Dayvolt asked if there will be enough parking on Saturday or the week days because he knows Insurance Max takes up a lot of parking right out in front of where they are going.

Mr. Brunton stated they are primarily 8 a.m. to 5 p.m. and they may have one or two people stay later.

Mr. Metts stated there is an abundance of parking in front of Wesselmans and the church will mostly be holding services when the other tenants aren't there. He stated they will get double utilization of the parking area.

Larry Willis stated they are only required 25 spaces and there is more there.

Mrs. Rector stated they check parking for the whole facility.

Terry Dayvolt asked if only 150 people are allowed in that square footage to which Mrs. Rector stated she didn't know if that was the code or not.

Mr. McCune stated it was State Fire Code. He stated even if they have sprinklers they have a limitation of people and he should talk to the Fire Chief.

Mr. Brunton stated he hasn't talked to them but he expects they will inspect the sprinklers, etc. He stated it is such a big space and 150 seats only takes up about 20% of the area.

Mr. McCune stated it isn't about the seats; in case of a fire it is how many people can get out of the door and that is what you have to consider. He stated you consider the square footage of the room and the exits.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Terry Dayvold made a motion the findings of fact be made as follows:

- 1 The USE is deemed essential or desirable to the public convenience or welfare.
- 2 The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
- 3 The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
- 4 The USE as developed will not adversely affect the surrounding area.
- 5 Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.
7. The USE is listed in this zoning with a Special Use Approval.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

- 1 Subject to any required Building Permit from the Warrick County Building Department.
- 2 Subject to all public utility easements and facilities in place.
- 3 Subject to the property being in compliance at all times with the applicable zoning ordinance of Warrick County.
- 4 Subject to any required driveway permit being obtained
- 5 Subject to all rules and regulations of the Newburgh sewer and water company.
- 6 If the Special Use is abandoned for one year or has not been completely established within one (1) year of the date granted, the Special Use shall be null and void.
- 7 The Special Use may not be altered to become any other use than that which was approved by the Board of Zoning Appeals.

The motion was seconded by Don Mottley and unanimously carried.

OTHER BUSINESS:

Larry Willis stated last year they were sending their motions to the Executive Director in order for her to read them. He stated they should discuss whether they want to have her read the motions or read them themselves.

Attorney Doll stated he made that suggestion near the end of last year. He stated when a motion is made it is transcribed into the Minutes and the Minutes are very often the basis of litigation. He stated having the motions exactly right is very important. He stated he had suggested whoever wanted to make the motion would make it and pass his findings to the Executive Director so she could read it and then it was enunciated correctly. He stated then the motion would be seconded. He stated he would encourage them to allow that to continue because it makes a more consistent record. He stated the problem would arise if there was ever a written record being different from the verbal motion.

Terry Dayvold made a motion to have the Executive Director (staff) read the findings. The motion was seconded by Don Mottley and unanimously carried.

ATTORNEY BUSINESS:

None.

EXECUTIVE DIRECTOR BUSINESS:

None.

Mr. Willis welcomed the new Board members and stated last year there were several meeting in which they didn't have a quorum and he hopes that this year they will not have that problem.

Being no further business the meeting adjourned at 6:40 P.M.

Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Area Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held January 23, 2008.

Sherri Rector, Executive Director & Secretary